

**BEFORE THE ALCOHOLIC BEVERAGE CONTROL APPEALS BOARD  
OF THE STATE OF CALIFORNIA**

**AB-8658**

File: 20-151637 Reg: 06062048

CIRCLE K STORES, INC., dba Circle K Store 1028  
1665 Hanford Armona Road, Hanford, CA 93230,  
Appellant/Licensee

v.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,  
Respondent

Administrative Law Judge at the Dept. Hearing: Sonny Lo

Appeals Board Hearing: October 2, 2008  
San Francisco, CA

**ISSUED JANUARY 7, 2009**

Circle K Stores, Inc., doing business as Circle K Store 1028 (appellant), appeals from a decision of the Department of Alcoholic Beverage Control<sup>1</sup> which suspended its license for 10 days for appellant's clerk selling an alcoholic beverage to a police minor decoy, a violation of Business and Professions Code section 25658, subdivision (a).

Appearances on appeal include appellant Circle K Stores, Inc., appearing through its counsel, Ralph B. Saltsman and Stephen W. Solomon, and the Department of Alcoholic Beverage Control, appearing through its counsel, Dean Lueders.

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<sup>1</sup>The decision of the Department, dated November 14, 2006, is set forth in the appendix.

## FACTS AND PROCEDURAL HISTORY

Appellant's off-sale beer and wine license was issued on January 26, 1984. On February 27, 2006, the Department filed an accusation against appellant charging that, on December 3, 2005, appellant's clerk, Guadalupe Reyes (the clerk), sold an alcoholic beverage to 17-year-old David Medina. Although not noted in the accusation, Medina was working as a minor decoy for the Hanford Police Department at the time.

At the administrative hearing held on September 19, 2006, documentary evidence was received, and testimony concerning the sale was presented by Medina (the decoy) and by Mitch Smith, a Hanford Police officer.

Subsequent to the hearing, the Department issued its decision which determined that the violation charged had been proven, and no defense had been established.

Appellant has filed an appeal making the following contention: the Department communicated ex parte with its decision maker in violation of the Administrative Procedure Act. Appellant has also filed a motion to augment the record by the addition of any report of hearing and General Order No. 2007-09. Appellant cites *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2006) 40 Cal.4th 1 [50 Cal.Rptr.4th 585] (*Quintanar*), and cases involving the same and related issues.

## DISCUSSION

The Department has filed a two paragraph brief, stating:

The Appellant does not raise a single issue relating to the finding contained in the Proposed Decision. As such, it is presumed that the Appellant concedes that a violation of the Alcoholic Beverage Control Act occurred and that the penalty is appropriate.

The Appellant does raise issues regarding an alleged ex parte contact (Quintanar issue) and the Department requests that this case be remanded to

the Department for consideration of this issue.

There being no objection from appellant's counsel, we will return this matter to the Department for an evidentiary hearing on the ex parte communication issue in accordance with the Department's request. We express no opinion concerning the statements in the first paragraph of the Department's brief.

#### ORDER

This matter is remanded to the Department for an evidentiary hearing in accordance with the foregoing opinion.<sup>2</sup>

FRED ARMENDARIZ, CHAIRMAN  
SOPHIE C. WONG, MEMBER  
TINA FRANK, MEMBER  
ALCOHOLIC BEVERAGE CONTROL  
APPEALS BOARD

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<sup>2</sup>This order of remand is filed in accordance with Business and Professions Code section 23085, and does not constitute a final order within the meaning of Business and Professions Code section 23089.